

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

50277-2241

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On 8/21/2007Signature /JuliaAThomas/

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Application Number

10/697,070

Filed

10/29/2003

First Named Inventor

Keith Alan Hankin

Art Unit

2163

Examiner

Lie, Angela M

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

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applicant/inventor.

/JuliaAThomas#52283/

Signature

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assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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Registration number if acting under 37 CFR 1.34

August 21, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

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*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED

PRE-APPEAL BRIEF REQUEST FOR REVIEW

As will be seen from the discussion below, the rejections of all of the pending claims are predicated upon clear errors of fact and, consequently, should be reversed.

The Final Office Action rejected Claim 1 under 35 U.S.C. §112, second paragraph, as being indefinite, allegedly, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Items 3 and 4 on page 2 of the Final Office Action, mail date 5-21-2007 (“Final Office Action”) are indicative of the Final Office Action’s error in the understanding and knowledge that two database servers can have different amounts of free space for the same database without partitioning or segmenting the database.

Figs. 1 and 3 and accompanying text clearly illustrate a point of view of each database server, Database Server A 120A and Database Server B 120B. Each of Database Server A 120A and Database Server B 120B has its own space usage data, Space Usage Data A 122A and Space Usage Data B 122B and as depicted in Fig. 3. Fig. 3 shows each database server 304 has its own space usage data 302. Each space usage data 302 for each database server 304 contains a set of Tablespaces, data files, and allocated data blocks.

Hence, in view of the evidence put forth herein above and in view of the understanding of database server technology of one skilled in the art, it has been shown that two servers can each have different free space amounts.

Also, the amount of free space in Claim 1 can reflect physical space or virtual space. In fact, dependent Claim 2 requires that the space usage data reflect the amount of free space in one or more tablespaces. Dependent Claim 3 requires that the space usage

data reflect the amount of free space in one or more data files. Hence, the scope of the subject matter embraced by Claim 1 is clear and the application has not otherwise indicated a scope different from that defines in the claims.

Hence, in accordance with MPEP 2173.04, Breadth is Not Indefiniteness, the Claim 1 complies with 35 U.S.C. §112, second paragraph.

As well, the Final Office Action erred in failing to follow controlling law in *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971), breadth of a claim is not to be equaled with indefiniteness.

Thus, the rejection of Claim 1 is predicated upon clear errors of fact. Therefore, the rejection of Claim 1 under 35 U.S.C. §112, second paragraph, should be reversed.

The Final Office Action rejected Claim 1 under 35 U.S.C. §112, first paragraph, as failing, allegedly, to comply with the written description requirement.

Regarding the comments in Item 6 of the Final Office Action, the discussion hereinabove shows that the Final Office Action erred in the understanding and knowledge of database server technology by one skilled in the art. Hence, in view of the discussion hereinabove, the claimed subject matter is described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time the invention was filed, had possession of the claimed invention.

Thus, the rejection of Claim 1 is predicated upon clear errors of fact. Therefore, the rejection of Claim 1 under 35 U.S.C. §112, first paragraph, should be reversed.

The Final Office Action rejected Claim 1 under 35 U.S.C. §102(e) as being anticipated, allegedly, by Chinta. Claim 1 recites, among other features:

“storing, by a first database server, a first set of space usage data that identifies a first amount of free space associated with the database,”.

In Response to Arguments, on page 8, Item 13 of the Final Office Action, the Final Office Action takes the position that Chinta **does not explicitly disclose:**

“storing, by a first database server, a first set of space usage data that identifies a first amount of free space associated with the database.”.

Rather, the Final Office Action asserts that (emphasis added) “Figure 23 clear shows that free space in the database **is periodically checked** by the application server.” The Final Office Action then makes the judgment and asserts it by stating (emphasis added), “further this information **would have to be** stored by this application server **at the very least temporarily**, in order **to check** if the space is sufficient for the message logging.”

Hence, the Final Office Action alleges that “information would have to be stored by this application server at the very least temporarily, in order to check” is equivalent to the claimed (emphasis added), “**storing**, by a first database server, a first set of **space usage data that identifies a first amount of free space associated with the database.**”

Regarding the rejection of the following features of Claim 1 show hereinbelow, it is evidently clear that the Final Office Action is in error:

retrieving, from one or more second database servers, a second set of **space usage data that identifies a second amount of free space associated with the database**,
wherein the second set of **space usage data** is updated, by the one or more database servers, based on changes made to the database by the one or more second database servers;
updating the first set of **space usage data** with the second set of **space usage data**; and
evaluating the usage of space in the database based on the updated first set of **space usage data**.

The Final Office Action is in error, at least, because the Final Office Action **completely ignores** the fact that the data is **space usage data** that is **explicitly defined** in the claim as data that identifies an amount of free space associated with the database.

Specifically and illustratively, regarding the claimed feature:

“retrieving, from one or more second database servers, a second set of **space usage data that identifies a second amount of free space associated with the database,**”

on page 4, of Item 9, the Final Office Action **erroneously** relied on load balancing information to be equivalent to space usage data. Load balancing information is not equivalent to space usage data. Col. 13, lines 58-63 to Chinta describe what is meant by load balancing information. It is information, “such as the server load criteria and application component performance criteria... .” To replace the claimed “retrieving space usage data that identifies an amount of free space associated with the database” cannot enable the claimed subject matter. On this error alone, Chinta does not teach the claimed subject matter.

Regarding the claimed feature, “updating the first set of **space usage data** with the second set of **space usage data**” the Final Office Action **erroneously** relied on Chinta’s load balancing service where one application server redirects a request to another server, because the other server may be better able to process the request. On this fact alone, Chinta does not disclose the claimed “updating the first set of **space usage data** with the second set of **space usage data.**” The Final Office Action erroneously fails to consider in determining anticipation, the claimed “space usage data that identifies an amount of free space associated with the database”.

Further, the Final Office Action errs by improperly reading into Chinta what is not disclosed nor fairly suggested. Regarding the cited passage to Chinta relied on, which is a discussion on Chinta's load balancing service, the Final Office Action improperly reads into Chinta as follows. The Final Office Action asserts (emphasis added):

“in this instance logging information in the application server to which request was transferred **might be** updated with out of space data for the new logging message/request, which **might have** a different size than the previously existing one and therefore previous out of space data on the applicant data **might not be** sufficient.”

Thus, the rejection of Claim 1 is predicated upon clear errors of fact. Therefore, the rejection of Claim 1 under 35 U.S.C. §102(e) should be reversed.

By virtue of their dependence from Claim 1, Claims 2-3, 5-11, and 13 inherit the features that are distinguished from Chinta above.

Therefore, the rejection of Claims 2-3, 5-11, and 13 under 35 U.S.C. §102(e) should be reversed.

Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable, allegedly, over Chinta, in view of Levine. By virtue of its dependence from Claim 1, Claim 12 inherits the features that are distinguished from Chinta above. Therefore, the rejection of Claim 12 under 35 U.S.C. §103(a) should be reversed.

Claims 14- 16 and 18-26 recite computer-readable media bearing instructions for performing the methods of Claims 1-3 and 5-13 respectively. As such, the rejections of Claims 14- 16 and 18-26 are predicated upon clear errors of fact and, consequently, should be reversed. In summary, the rejections of all of the pending claims should be reversed, because, as shown above, the rejections of all of the pending claims are predicated upon clear errors of fact.